

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

FRANCIS GRANDINETTI ,)	CIV. No. 14-00393 SOM/BMK
)	
Plaintiff ,)	ORDER DISMISSING MOTION FOR FRAP
)	4(a)(4)(A)(ii) AND FRCP 52(b)
vs .)	REMEDIES FOR LACK OF
)	JURISDICTION
LINDA C.C.C. GRANDINETTI ,)	
)	
Defendant .)	
)	

**ORDER DISMISSING MOTION FOR FRAP 4(a)(4)(A)(ii)
AND FRCP 52(b) REMEDIES FOR LACK OF JURISDICTION**

On September 26, 2014, the court dismissed this action and denied Plaintiff's *in forma pauperis* request pursuant to 28 U.S.C. § 1915(g), without prejudice to Plaintiff's refiling his claims with concurrent payment of the filing fee in the District of Arizona. See Doc. No. 4. Judgment entered that day. Doc. No. 5.

On November 26, 2014, Plaintiff filed a notice of appeal. Doc. No. 6 (given to prison officials for mailing on November 21, 2014). Two days later, on November 28, 2014, Plaintiff filed this "Motion For FRAP 4(a)(4)(A)(ii) and FRCP 52(b) Remedies." Doc. No. 7 (given to prison officials for mailing on November 24, 2014). For the following reasons, the Court DISMISSES Plaintiff's Motion.

I. LEGAL STANDARDS

Federal Rule of Civil Procedure 52(b) states:

Amended or Additional Findings. On a party's motion filed *no later than 28 days after the entry of judgment*, the court may amend its findings - or make additional findings - and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(italics added).

Federal Rule of Appellate Procedure 4(a) states in pertinent part:

(4) Effect of a Motion on a Notice of Appeal.

(A) If a party *timely files* in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

* * *

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment.

(italics added).

II. ANALYSIS

Plaintiff's Motion is untimely. See Fed. R. Civ. P. 52(b). Therefore, Rule 4(A)(4)(ii) has no effect on the date Plaintiff may file a notice of appeal.

More importantly, Plaintiff filed a notice of appeal four days before filing the instant motion. Generally, once a party files a notice of appeal, the district court is divested of

jurisdiction over any matter which is the subject matter of the appeal. See *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *Natural Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). While a "notice [of appeal] filed before the filing of one of the specified motions [in Appellate Rule 4(a)(4)] . . . is, in effect, suspended until the motion is disposed of," Transmittal Note to the 1993 Amendment to Appellate Rule 4(a)(4), this exception applies only when the motion itself is timely. See *Yousefian v. City of Glendale*, 2013 WL 948743, at *1 (C.D. Cal. Mar.11, 2013) (citing *Crawford v. Kingdom of Saudi Arabia*, 2012 WL 3638628, at *3 (N.D. Cal. Aug.22, 2012) (stating that the Ninth Circuit held appeal in abeyance pending the district court's resolution of a post-judgment motion filed after the notice of appeal but within Rule 4(a)(4)'s 28-day time period)). This court lacks jurisdiction to decide Plaintiff's Motion.

Finally, even if Plaintiff's Motion was timely and appellate jurisdiction were suspended, Plaintiff presents no coherent reason for the court to amend its judgment or make additional findings.

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III. CONCLUSION

Plaintiff's Motion for FRAP 4(a)(4)(a)(ii) and FRCP 52(b) Remedies is DISMISSED for lack of jurisdiction.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, December 1, 2014.



/s/ Susan Oki Mollway
Susan Oki Mollway
Chief United States District Judge

Grandinetti v. Grandinetti, 1:14-cv-00393 SOM/BMK; psa 2014 Recon 14-393 som (R52(b) after NOA; J:\PSA Draft Ords\SOM\Grandinetti 14-393 som (R52(b) after NOA).wpd